

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR05-582

May 3, 2006

NORMAN GAINES

APPELLANT

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[CR-01-60A]

V.

STATE OF ARKANSAS

APPELLEE

HON. LARRY CHANDLER, CIRCUIT
JUDGE

AFFIRMED

Appellant Norman Gaines appeals the trial court's decision to revoke his probation and sentence him to six years' incarceration with four years suspended. On appeal, Gaines argues that there was insufficient evidence to support the harassment charge upon which the revocation was based. We disagree and affirm.

On May 20, 2002, Gaines was placed on five years' probation after he entered a plea of guilty to sexual abuse of a minor. His conditions of probation required that he not violate the law, be on good behavior, and report any arrest or questioning by law enforcement to his supervising officer within twenty-four hours. On July 28, 2004, Gaines was arrested for harassment. A revocation hearing was held on March 3, 2005.

Wesley Stockwell, manager of the S&S Home Center in Magnolia, Arkansas, testified that Gaines frequently came to the store, often right before closing. Stockwell stated that Gaines referred to the women that worked at the store as “sweetheart” and “honey.” Stockwell described Gaines as “strange” and “peculiar.” Stockwell recited that the women who worked in the store felt uncomfortable around Gaines. Stockwell explained that several of the women became concerned for their safety, especially Cindy Williams. He testified that employees of the store would warn Cindy that Gaines was coming to the store so that she could hide in the back of the store or leave early without Gaines noticing. Stockwell stated that he was afraid Gaines might try to follow Cindy home. In January 2004, Stockwell’s boss sent Gaines a letter asking him not to come to the store any more. Stockwell admitted that after the letter was sent, Gaines did not come back to the store. However, Gaines continued to order merchandise via telephone and have someone else pick it up. Stockwell recalled a day in June 2004 where Gaines got upset and called the store several times in a row complaining about his banishment from the store.

Christie Weems, an employee of the store, testified that Gaines wanted only women to wait on him, and he would pat them on the shoulder or back, give them hugs, and talk about things unrelated to hardware. She stated that she became uncomfortable with Gaines and asked that she not be responsible for assisting him in the store. Weems also testified that Gaines often asked specifically for Cindy Williams. Weems described how Gaines frequently

called the store, and one time in particular, she answered the phone and he screamed at her for reporting his actions to Stockwell.

Cindy Williams, another employee at the store, testified that she was afraid of Gaines. She testified that her interactions with Gaines became a problem during the late summer of 2003. She recounted how at first, he visited the store regularly like a normal customer, then he started coming in only to talk to her. She testified that these encounters became so bothersome that she began doing things to avoid contact with Gaines, such as hiding in the back of the store and leaving work early when she saw his truck pull into the parking lot. She described how his large, green truck made a distinctive sound, so she had warning when he arrived.

Cindy stated that in March or April 2004, she left her apartment one morning and noticed Gaines's truck parked next to her vehicle. She admitted on cross that her apartment shared a parking lot with a dentist's office. She also recited how in May 2004, she was sitting in her car when a white van parked directly behind her—blocking her movement. She stated that as she went to get out of the car, the van pulled off. She watched the van drive around the block and park behind some bushes. She stated that she was afraid someone was trying to steal her car, so she left to switch vehicles and had a friend watch the van's reaction. Cindy stated that the van followed her at first, then left. When she returned in a different vehicle ten minutes later, the white van was again sitting in the parking lot. She stated that she noticed it had out-of-state tags. Later, as she was leaving church, she saw the van pass by

three times. She testified that on the third time, she could see the driver's face. She stated that she was "positive" it was Gaines. From the first time to the last time she saw the van, two and a half to three hours had passed. She immediately reported the incident to the police.

Norman Gaines testified in his own defense. He denied harassing anyone, denied making any calls to the store concerning the charges of harassment, and denied ever driving or owning a white van. He acknowledged that his dentist's office was next door to Cindy's apartment but stated that he had no idea Cindy lived there at that time.

Following the revocation hearing, the trial court found that Gaines had violated his probation and sentenced him to six years' imprisonment, with four years suspended. In its ruling, the court found that the weight of the evidence favored a finding that Gaines harassed Christie Weems and Cindy Williams. The trial judge specifically noted that Cindy Williams's demeanor on the stand convinced him that she saw Gaines following her in the white van.

To revoke probation or a suspension, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation or suspension. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). In order for appellant's suspended sentence to be revoked, the State need only prove that the appellant committed one violation of the conditions. *Id.* at 234, 100 S.W.3d at 71. On appeal, the trial court's findings will be upheld unless they are clearly against a preponderance of the evidence. *Id.*, 100 S.W.3d at 71. Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.*, 100 S.W.3d at 71.

Because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony, we defer to the trial judge's superior position. *Id.*, 100 S.W.3d at 71.

Arkansas Code Annotated section 5-71-208 (Repl. 2005) states that:

(a) A person commits the offense of harassment if, with purpose to harass, annoy, or alarm another person, without good cause, he or she:

(1) Strikes, shoves, kicks, or otherwise touches a person, subjects that person to offensive physical contact or attempts or threatens to do so;

...

(3) Follows a person in or about a public place;

...

(5) Engages in conduct or repeatedly commits an act that alarms or seriously annoys another person and that serves no legitimate purpose; or

(6) Places a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by that person, or residence, other than the residence of the defendant, for no purpose other than to harass, alarm, or annoy.

Gaines's probation was conditioned upon his good behavior and his not violating the law. Unlike a criminal trial, where the requirement is proof beyond a reasonable doubt, in a revocation proceeding, the State must only show it was more likely than not that the defendant committed the acts. It is clear from the court's ruling that it believed the testimony of the State's witnesses and not the self-serving testimony of the defendant. We are satisfied that the trial court's finding that Gaines committed the crime of harassment was not clearly erroneous; therefore, we affirm.

Affirmed.

HART and ROAF, JJ., agree.